

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7336

Petition of Central Vermont Public Service
Corporation for Approval of an Alternative
Regulation Plan Pursuant to 30 V.S.A. § 218d

REPLY BRIEF OF THE DEPARTMENT OF PUBLIC SERVICE

The Department of Public Service, by its undersigned Special Counsel, submits the following Reply Brief for consideration by the Public Service Board in this matter. The Department believes that the issues in dispute have been well briefed at this point, and therefore offers only a few comments here on the arguments presented in CVPS's Brief and Proposal for Decision (CV Brief).

Docket 7321 MOU

CVPS argues that the Cost of Service in Attachment 2 of the Docket 7321 MOU is "non-compensatory" and "unrealistically low." Tr. 7/9/08 at 192-196 (Cook/Keefe). This argument should be considered in the light of certain other facts. One is that as recently as January 2008 the Company asserted that the rates based on that COS were just and reasonable. Docket 7321, exh. Joint-1 (MOU) at 2; *see also* tr. 1/09/08 at 43 (Picton). Other relevant facts are shown in the Company's Form 10-Q, filed in this docket on August 13, 2008. That Form 10-Q, for the quarter ended 6/30/08, shows solid growth over the same period in 2007, in net income, cash flows and earnings per share - despite lower average retail sales. CVPS Form 10-Q at 2, 3 & 6.¹ CVPS nonetheless asserts in this case that it does not expect to earn its allowed return in 2008. Tr. 07/10/08 at 61 (Keefe). The conflicting representations and information presented by the Company over the last nine months do not engender confidence in its dire assessments of the effects of the Department's proposals.

¹ Cost containment by the utility is not among the identified drivers of this financial performance. *Id.* at 21.

The Department's confidence in the Company is further undermined by its continuing assertions that it is not bound by the provisions of the Docket 7321 MOU, except to the extent that its provisions were specifically approved by the PSB. CVPS is correct that the PSB approved the Docket 7321 settlement as a bottom-line settlement, and did not approve specific line items in Attachment 2. CV Brief at 15. Nonetheless, this Company has made improvement in its regulatory relations a central component of its plan to return its credit rating to investment grade. It is not clear how its cavalier attitude toward an agreement with the Department advances that goal. *See* tr. 7/10/08 at 43-60 (Cook/Keefe); 95-96 (Keefe); 127 (Behrns).

Also noteworthy in its discussions of the Docket 7321 MOU is the Company's explanations for its agreement to a settlement that it now asserts is non-compensatory. *See, e.g., id* at 46 (Cook). It is curious that CVPS—which has operated under essentially unchanged ratemaking procedures for decades - has been unable to manage its systems to meet the requirements of the known and measurable standard applicable in rate-setting. Nonetheless, under traditional ratemaking CVPS has been able to earn over its allowed ROE in many years.

Cost Caps and Cost Control

'CVPS maintains that the Plan presents opportunities to improve traditional ratemaking and lower costs to consumers.' CV Brief at 7. It is not clear how this assertion is consistent with annual rate increases of 6% to 9%. The increases allowed under CV's proposal would exceed any increase the Company has been able to justify in recent years. CVPS asserts that the Department's proposed non-power cost cap does not allow for "normal" cost escalation. CV Brief at 30-31. "Normal" in this context apparently means something other than consistent with historical experience.

Also note this generous rate cap does not apply to potential power cost increases or shortfalls in Company earnings. CV Brief at 19. The proposed cost caps do not limit what can be recovered from customers, only what can be billed in a particular year. If the Company fails to adequately control its non-power costs, customers could experience the full amount of the unusually high rate increases allowed by the Unicap, plus have any increases in power costs or insufficient earnings deferred for later recovery.

Speaking of cost control, while the Company maintains that generous rate caps will provide it with an incentive to contain costs, it argues that the caps proposed by the Department will cause it to give up. CV Brief at 32-33. Indeed, its record in this area is not impressive, for example in the area of its continually increasing headcount. CV Brief at 37 (¶ 91). This relentless increase in the number of employees is occurring in a period of essentially flat customer growth. Tr. 7/10/08 at 123 (Behrns). CVPS correctly points out that the Business Process Review being conducted by Huron Consulting Group is reviewing the Company's staffing levels and productivity measures. CV Brief at 36. One can only wonder what the Company's reaction will be if Huron conducts an objective, meaningful, comparative review of those areas and concludes that the Company is over-staffed or failing to meet reasonable productivity goals.

The safeguard against inefficient management is, as the Company again correctly notes, the power of the regulators to open investigations at the time of annual rate filings. CV Brief at 32. It has been the Department's understanding, however, particularly in the context of efforts to improve the Company's credit rating, that CVPS would prefer not to have contested investigations into its regulated business.

Another area in which the Company's commitment to cost control (and to avoiding regulatory disputes) could be questioned is its preference for a plan that would require it to pay thousands of dollars to consultants to produce metrics for calculation of cost variables. Tr. 7/10/08 at 125-126 (Behrns). The DPS's proposal, which the Company opposes, would make use of simple, readily-available measures.

WHEREFORE, the Department of Public Service respectfully requests that the Public Service Board adopt the findings and proposals submitted in the DPS Brief, and approve an Alternative Regulation Plan for Central Vermont Public Service modified as recommended by the Department.

Dated at Montpelier, Vermont this 22nd day of August, 2008.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____

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